

# PATENT COOPERATION TREATY

From the:  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

WRAY & ASSOCIATES  
Level 4 The Quadrant  
1 William Street  
PERTH WA 6000

## PCT

WRITTEN OPINION OF THE INTERNATIONAL  
PRELIMINARY EXAMINING AUTHORITY  
(PCT Rule 66)

Date of mailing  
(day/month/year) **06 JAN 2005**

Applicant's or agent's file reference  
**110550/gbc**

**REPLY DUE** within **TWO MONTHS**  
from the above date of mailing

International application No.  
**PCT/AU2004/000089**

International filing date (day/month/year)  
**22 January 2004**

Priority date (day/month/year)  
**22 January 2003**

International Patent Classification (IPC) or both national classification and IPC

Int. Cl. <sup>7</sup> **A61N 2/10**

Applicant

**SIRTEX MEDICAL LIMITED et al**

**WRAY & ASSOCIATES**

- 7 JAN 2005

1. ☒ The written opinion established by the International Searching Authority:

☒ is

considered to be a written opinion of the International Preliminary Examining Authority.

Rep. Issued: **LMK**

Acc:

2. This **second** (second, etc.) opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☒ Box No. VIII Certain observations on the international application

The applicant is hereby invited to reply to this opinion.

**When?** See the **Reply Due** date indicated above. However, the Australian Patent Office will not establish the Report before the earlier of (i) a response being filed, or (ii) one month before the **Final Date** by which the international preliminary examination report must be established. The Report will take into account any response (including amendments) filed before the Report is established.

**If no response is filed by 1 month before the Final Date**, the international preliminary examination report will be established on the basis of this opinion.

Applicants wishing to have the benefit of a further opinion (if needed) before the report is established should ensure that a response is filed at least **3 months before the Final Date** by which the international preliminary examination report must be established.

**How?** By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

**Also** For an additional opportunity to submit amendments, see Rule 66.4.  
For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4bis.  
For an informal communication with the examiner, see Rule 66.6.

4. The **FINAL DATE** by which the international preliminary report on patentability (Chapter II of the PCT) must be established according to Rule 69.2 is: **22 May 2005**

**ENTERED**  
**- 7 JAN 2005**  
**BY**  
**NT**

Name and mailing address of the IPEA/AU  
AUSTRALIAN PATENT OFFICE  
PO BOX 200, WODEN ACT 2606, AUSTRALIA  
E-mail address: pct@ipaaustralia.gov.au  
Facsimile No. (02) 6285 3929

Authorized Officer  
**DR. A TESSEMA**  
Telephone No. (02) 6283 2271

WRITTEN OPINION OF THE  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

International application No.

PCT/AU2004/000089

**Box No. I**      **Basis of the opinion**

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This opinion is based on a translation from the original language into the following language ,  
which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1 (b))
- ☐ publication of the international application (under Rule 12.4)
- ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the elements of the international application, this opinion has been established on the basis of (*replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed."*):
- ☐ the international application as originally filed/furnished
- ☒ the description:    pages **1-25**, as originally filed/furnished  
                              pages , received by this Authority on    with the letter of  
                              pages , received by this Authority on    with the letter of
- ☒ the claims:        pages , as originally filed/furnished  
                              pages , as amended (together with any statement) under Article 19,  
                              pages **26-30**, received by this Authority on 22 November 2004 with the letter of 22 November 2004  
                              pages , received by this Authority on    with the letter of
- ☒ the drawings:     pages **1/7-7/7**, as originally filed/furnished  
                              pages , received by this Authority on    with the letter of  
                              pages , received by this Authority on    with the letter of
- ☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing.
3. ☐ The amendments have resulted in the cancellation of:
- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):
4. ☐ This opinion has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
- ☐ the claims, Nos.
- ☐ the drawings, sheets/figs
- ☐ the sequence listing (*specify*):
- ☐ any table(s) related to the sequence listing (*specify*):

WRITTEN OPINION OF THE  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

International application No.

PCT/AU2004/000089

**Box No. V**      **Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

|                               |             |     |
|-------------------------------|-------------|-----|
| Novelty (N)                   | Claims      | YES |
|                               | Claims 1-34 | NO  |
| Inventive step (IS)           | Claims      | YES |
|                               | Claims 1-34 | NO  |
| Industrial applicability (IA) | Claims 1-34 | YES |
|                               | Claims      | NO  |

) Citations and explanations:

NOVELTY; INVENTIVE STEP: Claims 1-34

Objection, regarding novelty and inventive step, raised in the written opinion established by the International Searching Authority ( first opinion ) is still relevant to present claims for the reasons stated in that opinion. As indicated in the first opinion, each document ( D1 -D10 -see the opinion ) discloses nano sized magnetic particles of the types defined in present claims. The Attorney's remarks that none of the citations specifically indicate the properties ( SAR, VAR & W/g ) defined in present claims is noted. However, the types of nanomagnetic particles disclosed by the citations are the same ( e.g iron oxide as in present claim 16 ) as the claimed invention and, hence, the nanomagnetic particles of the citations do inherently possess these properties; similarly, the matrices of the citations are also the same as the claimed ( claims 21-23 ) invention ( polymer or biodegradable polymer ). The citations also disclose the use of such particles in the field of medical therapy. Therefore, present claims 1-34 are considered not to satisfy the PCT requirements of novelty and inventive step.

)

WRITTEN OPINION OF THE  
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

International application No.

PCT/AU2004/000089

**Box No. VIII** Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

1. The scope of claim 2 is unclear because of the term " up to 40% ". This term includes 40% which is excluded by page 5, line 29, which indicates " less than approximately 40% " ( see also page 8, line 17 and original claim 5 ).